IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3458 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.M. PANCHAL

Versus

ANDHA KANYA PRAKASH GRUH TRUST

Appearance:

1. Special Civil Application No. 3458 of 1994

MR RAJESH MANKAD for MR MUKUL SINHA for Petitioner No. 1

MS PARUL R PATEL for Respondent No. 1

MR PR ABICHANDANI AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 05/08/2004

ORAL JUDGEMENT

#. The petitioner-Mr.C.M.Panchal was interviewed by respondent No.1-Trust and appointed on the post of Udyog Sikshak (Craft Teacher) purely on temporary basis on probation for a period of six months with effect from 21.11.1985 by order dated 18.12.1985 (Annexure-I). It is stated in the order at Annexure-I that if his work is found to be satisfactory, then he may be confirmed on the said post subject to the approval of Social Defence Department-respondent No.2. It is also stated in the said order that if his work is not found satisfactory then the institution can further extent his period of probation and such decision of the Institution shall be final. It is also stated in it that if during the period of probation, if his work is not found satisfactory, then without any reason he may be relieved from the service. This appointment order of the petitioner at Annexure-I was accepted by the petitioner with the aforesaid conditions mentioned in it.

#. It appears that though the appointment of the petitioner was purely on temporary basis for a period of six months, the respondent No.2 gave approval to his appointment on temporary basis for a period of one year, which is clear from the order dated 21.1.1985 passed by the Director (Annexure-III). It appears that the approval was given to two other employees also along with the petitioner, therefore, an apparent mistake seems to have been committed in the order (Annexure-III) passed by the Director.

#. As per the terms and conditions of the first appointment order dated 18.12.1985 (Annexure-I), the services of the petitioner were not found to be satisfactory, therefore, there was no option for the institution but to; (i) straightaway relieve him and terminate his services or (ii) give an opportunity to the petitioner to improve his work by further extending his period of probation. It seems that the respondent No.1 institution opted for the second option and accordingly by its order dated 11.8.1986 (Annexure-IV) the period of probation of the petitioner was extended for a further period of six months with effect from 26.5.1986 to 25.11.1986. However, by an impugned order of discharge simplicitor dated 10.11.1986 (Annexure-V), respondent No.1 institution terminated services of the petitioner on the ground that his work was not satisfactory. This impugned order (Annexure-V) was challenged by the petitioner by way of application No.222 of 1989 before the Gujarat Primary Education Tribunal Ahmedabad (for short "the Tribunal"). However, the learned Tribunal by its judgment and order dated 31.3.1993 dismissed the

application of the petitioner mainly on the ground that at the time of passing of the impugned order of termination the petitioner had put in less than one year of service. Aggrieved of by this impugned judgment and order dated 31.3.1993 (Annexure-VI), the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India.

#. Though the petition is labelled as petition under Art.226 of the Constitution, strictly speaking it is a petition under Art.227 of the Constitution and this court has to exercise its power only under Art.227 of the Constitution. The scope of which is very narrow and limited as held by the apex court in case of Mohd. Yunus vs. Mohd. Mustaqum reportd in AIR 1984 SC 38 that "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision".

Keeping in mind the law laid down by the apex court in case of Mohd. Mustakim (supra) this petition is required to be decided.

#. Learned counsel Mr.Rajesh Mankad for the petitioner vehemently submitted that though it is well settled law that an order of termination of simplicitor of temporary employee or a probationer or even a tenure employee passed without casting any stigma may not be interfered with by the court. But the court can always look into the circumstances and if inefficiency was foundation for passing of such order of termination then such order must be held to be penal in nature. Relying upon judgment of the Hon'ble Supreme Court in case of A.P.State Federation of Co-operative Spinning Mills Ltd. vs. P.V.Swaminathan reported in 2001(89) FLR 332, Mr.Mankad submitted that in the instant case it is clear from the impugned order of termination that the services of the petitioner were terminated on the ground of unsatisfactory work of the petitioner. Thus, the impugner order of termination cannot be said to be an order of termination simplicitor and it was of penal in nature, therefore, learned

Tribunal ought to have exercised its jurisdiction and quash and set aside the same. He, therefore, submitted that this court should exercise jurisdiction under Article 227 of the Constitution and quash and set aside the impugned order of termination as well as order passed by the learned Tribunal.

#. Before appreciating the aforesaid contention raised by Mr.Mankad for the petitioner, I would like to quote relevant observations made by the Hon'ble Supreme Court in Swaminathan's case (supra) as under :-

"The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by court. But the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed" (emphasis supplied).

#. The learned Tribunal has simply dismissed the application of the petitioner in view of the proviso to Section 40B(1)(a), which reads as under :-

40(B)(1)(a) No teacher or a recognised private primary school shall be dismissed or removed or reduced in rank nor his service be otherwise terminated until-

(i) he has been given by the manager an opportunity of showing cause against the action proposed to be taken in regard to him; and

(ii) the action proposed to be taken in regard to him has been approved in writing by the administrative officer of the school board in the

jurisdiction of which the private primary school is situate :

Provided that nothing in this clause shall apply to a teacher who is appointed temporarily for a period less than a year or a teacher appointed temporarily on a leave vacancy for a period less than a year".

Therefore, it appears that the learned Tribunal has not considered the question whether termination of the petitioner was simplicitor or of penal nature. When the aforesaid contention is raised before this court, then the same is required to be answered. In the instant case, the petitioner was initially appointed purely on ad-hoc and temporary basis for a period of 6 months probation by order at Annexure-I and as per the terms and conditions of his appointment at Annexure-I, his work was not found satisfactory during that period, therefore, instead of straightaway terminating his services without assigning any reason, the institution gave him one more chance and, therefore, they extended his probation period for a further period of six months, which was to come to an end on 25.11.1986. Before the further period of six months is to come to an end, on 25.11.1986, by an impugned order dated 10.11.1986, the respondent No.1 institution terminated services of the petitioner on the ground that his work was not satisfactory.

#. This cannot be said to be a case of so-called inefficiency. This court cannot sit in appeal over such decision of terminating service of the petitioner. The impugned order is passed without casting any stigma, therefore, I am of the considered opinion that the aforesaid judgment cited by Mr.Mankad for the petitioner will not help him in this case.

#. Mr.Mankad then submitted that the learned Tribunal committed grave error in dismissing the application of the petitioner on the ground that the petitioner was appointed for a period of one year, therefore, in view of the proviso to section 40B(1)(a) of the Act, application was required to be allowed. He submitted that initially his appointment was for a period of six months, but the respondent Director by his order dated 21.1.1985 had granted approval to his appointment for a period of further six months, therefore, merely because the respondent-institution later on extended his probation period for further period of six months by an order dated

11.8.1986, it cannot be said that his appointment was not for a period of one year. He also submitted that in the impugned order the respondent No.1 itself has stated that he was appointed on probation for a period of 12 months, which was to expire on 25.11.1986, therefore, the learned Tribunal was absolutely wrong in dismissing his application in view of proviso to Section 40B(1)(a) of the Act.

##. It is true that the respondent No.2-Director has given his approval for a period of one year, as per his order dated 21.1.1985, but as stated earlier, it was a common order passed in favour of in all three persons. In fact, the petitioner was appointed only for a period of six months, as per the order dated 18.12.1985 (Annexure-I). Therefore, this contention of Mr.Mankad that his appointment for a period of one year is rejected. Similarly, the contention of Mr.Mankad that the respondent No.1 institution had itself stated in the impugned order of termination (Annexure-V) that his period of probation was 12 months which was to expire on 25.11.1986, has no substance because his first appointment was clearly for a period of only six months. Later on his period of probation was further extended for a period of six months. It was always open to the respondent No.1 to terminate services before expiry of that further period of probation. Admittedly, the impugned order dated 10.11.1986 came to be passed prior to the expiry of further period of probation, which was to expire on 25.11.1986, therefore, the petitioner had not completed service of one year. In that view of the matter, it cannot be said that the learned Tribunal committed any error in dismissing the application of the petitioner in view of the proviso to section 40B(1)(a) of the Act.

In view of the above discussion, this petition fails and is hereby dismissed. Rule is discharged. No order as to costs.

(B.J.Shethna, J.)